

**REMARKS**

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested. Support for the amendments to claim 1 and new claim 113 is found on page 35, lines 22-30 of the present application. The limitations of the remaining claims are described as follows: on page 8, line 30 to page 9, line 11; page 11, line 30 to page 12, line 10; page 14, line 48 to page 15, line 8; page 29, lines 34-40; and page 31, line 31 to page 32, line 11.

The May 13, 2004, personal interview between Examiners Carlson and Desai and applicants' undersigned attorney is gratefully acknowledged. The substance of that interview is summarized below. At that interview, various amendments were discussed. Although the claim language proposed above differs from that discussed at the interview, it is submitted that the proposed claims are patentable over the cited prior art for the reasons noted below.


The rejection of claims 1 and 93-94 under 35 U.S.C. § 102(b) as anticipated by WO 98/54214 to Laby, et. al., ("Laby") is respectfully traversed.

Laby discloses a variety of fragments of the hypersensitive response elicitor from *Erwinia amylovora* which fragments themselves elicit a hypersensitive response. As noted in the paragraph bridging pages 14 and 15 of the present application, the hypersensitive response elicitors from *Erwinia amylovora* have 2 hypersensitive response eliciting domains. By contrast, the claims of the present application call for a protein with either three or more hypersensitive response eliciting domains (claims 1 and 95-112) or two or more hypersensitive response eliciting domains with at least one of the hypersensitive response eliciting domains being from a different host source than the other hypersensitive response eliciting domains in the protein (claims 95 and 113-130). Since Laby makes no suggestion of these claim limitations, it cannot be a proper basis for rejection of the claims. Accordingly, the rejection based on Laby should be withdrawn.

In view of all the foregoing, it is submitted that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Date: June 21, 2004

  
Michael L. Goldman  
Registration No. 30,727

NIXON PEABODY LLP  
Clinton Square, P.O. Box 31051  
Rochester, New York 14603-1051  
Telephone: (585) 263-1304  
Facsimile: (585) 263-1600

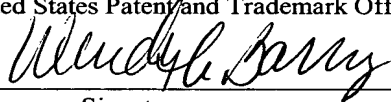
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) \_\_\_\_\_

June 21, 2004

Date



Signature

Wendy L. Barry

Type or Print Name